

Frederick County Ethics Commission
Minutes for the Public Meeting of Wednesday, December 14, 2016

Present: Brian Duncan, Chair
 Stephen K. Hess, Vice Chair
 M. Shane Canfield, Commission Member
 Deborah L. Lundahl, Commission Member
 Alan Shapiro, Commission Member
 Timothy Tosten, Commission Member
 Ernest A. Heller, Alternate Commission Member
 Linda B. Thall, Senior Assistant County Attorney

Absent: Christopher Glass, Sr., Commission Member

The meeting of the Frederick County Ethics Commission began at 7:00 p.m. on December 14, 2016, in the Winchester Room on the 2nd floor of Winchester Hall, 12 East Church Street, Frederick, Maryland 21701.

Introduction of new members – New Ethics Commission Members M. Shane Canfield, Deborah L. Lundahl, and Alan Shapiro were introduced by the Commission Chair.

Discussion of changes to the appointment process for new members and the role of the alternate member – Mr. Duncan raised the question of whether there is a continued need for the Commission to have an alternate member, given that there are now seven members on the Commission. Mr. Duncan noted that there may have been more of a need for an alternate when the Commission had only three members and when the membership was increased to five members. The alternate member could be needed when there would otherwise be a lack of a quorum or when one or more members recused themselves from a matter due to a potential conflict of interest. It was noted that a provision added to the Ethics Law in 2016 stating that the Commission can only issue a subpoena upon the affirmative vote of six members could cause problems for the Ethics Commission in the event that more than two of the members recuse themselves from hearing a complaint. In such a situation, having an alternate member would be important because the recusals could otherwise leave the Ethics Commission with less than six participating members, making it impossible to issue a subpoena.

The Commission also discussed a proposal made by Mr. Duncan to have the alternate member automatically fill a vacant position on the Commission when a regular member resigns or leaves at the expiration of his or her term. Mr. Hess suggested that there should be a distinction between filling a member's unexpired term and appointing the alternate for a full term as a regular member. Mr. Duncan agreed. The Senior Assistant County Attorney noted that this change to the appointment process could require amendment of the Ethics Law and further noted that under the County Charter, the County Executive has the authority to decide which person should be appointed to fill the position, subject to confirmation by the County Council.

Mr. Duncan proposed that the Commission send a letter to the County Executive and the County Council making two recommendations. First, the Commission would recommend that when a member resigns, the alternative member should automatically fill the position for the remainder of the unexpired term. When there is vacancy for a full term, the appointment process for having an independent committee making a recommendation to the County Executive for appointment would be followed. Second, the Commission would recommend a change to the supermajority requirement for issuance of a subpoena. If the Ethics Commission needs to issue a subpoena in connection with a complaint on which members of the Ethics Commission have recused themselves, the supermajority requirement could prevent the Ethics Commission from issuing a necessary subpoena, preventing the Commission from fulfilling its obligations to citizens to carry out its duties under the Ethics Law. The other members agreed with both recommendations and asked the Senior Assistant County Attorney to draft a letter for the Commission members.

Discussion of annual training on the Ethics Law – Mr. Duncan informed the Commission that he had contacted Montgomery County to find out what type of training that County's Ethics Commission provides and he will share that information with the other Commission members. Ms. Lundahl observed that more extensive training may be required for managers, while providing more basic training to employees. Mr. Hess suggested three different forms of training: online power point training, video presentations and live training. Certification that an employee has completed the training should be required, with verification from each employee's manager. The Commission members agreed to come back for further discussion with detailed suggestions and/or samples of training. The Commission asked the Senior Assistant County Attorney to contact the Director of the Frederick County Human Resources Division to find out what type of mandatory training is provided to new employees and whether any form of mandatory training is currently required of County officials and employees.

Decision to meet to perform an administrative function – The Commission has a pending request for an ethics investigation into actions taken by a County official.

MOTION: Mr. Shapiro made a motion to conduct an administrative function meeting to discuss the pending request for an investigation. Mr. Hess seconded the motion, which was approved by unanimous consent.

Required information regarding the administrative function meeting – The Commission began its administrative function meeting at approximately 8:00 p.m. on December 14, 2016, in the Winchester Room on the 2nd floor of Winchester Hall, 12 East Church Street, Frederick, Maryland 21701. Present for the meeting were Mr. Duncan, Mr. Hess, Mr. Canfield, Ms. Lundahl, Mr. Shapiro, Mr. Tosten, Mr. Heller and Ms. Thall. The members noted that the Ethics Commission had received a request for an investigation, but that no actual complaint had been submitted.

MOTION: Mr. Heller made a motion to have the Senior Assistant County Attorney contact the individual who made the request for an investigation. The attorney should explain that the Commission held off on responding to the investigation request until the new members of the Commission were appointed and confirmed, provide the individual with a copy of a letter relevant to the request, inform the individual of her right to file a complaint, and provide information on how to submit a complaint. Mr. Hess seconded the motion, which was approved by unanimous consent.

Adjournment

The Ethics Commission adjourned its meeting at 8:30 p.m.

/s/
Linda B. Thall, Senior Assistant County Attorney